

AMENDED IN ASSEMBLY MAY 23, 2011

AMENDED IN ASSEMBLY MAY 10, 2011

AMENDED IN ASSEMBLY APRIL 25, 2011

AMENDED IN ASSEMBLY APRIL 15, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 771**

---

---

**Introduced by Assembly Member Butler**

February 17, 2011

---

---

An act to amend Section 1368 of, and to add Section 1368.2 to, the Civil Code, relating to common interest developments.

### LEGISLATIVE COUNSEL'S DIGEST

AB 771, as amended, Butler. Common interest developments: requests for documents: fees.

The Davis-Stirling Common Interest Development Act requires an owner of a separate interest in a common interest development to provide specified documents to a prospective purchaser of that interest. Existing law requires a homeowners' association to provide these documents to the owner of the separate interest within 10 days of the mailing or delivery of the request, and limits the amount of fees charged for the provision of the documents to the association's actual costs to procure, prepare, and reproduce the requested documents.

This bill would require that the seller also provide a copy of specified minutes of the meetings of the association's board of directors. This bill would also require an association to provide to the seller a written or electronic estimate of the fees that will be assessed to provide the specified documents. The bill would permit the association to collect

a reasonable fee for procuring, preparing, reproducing, and delivering the requested documents and would prohibit charging additional fees for electronic delivery of documents. The bill would permit the association to contract with any person or entity to provide the documents on behalf of the association, subject to the same standards required of the association. The bill would require the owner of a separate interest to also provide a form for billing disclosures, as specified, to a prospective purchaser, and would also require the association to provide this form to a recipient authorized by the owner of the separate interest.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1368 of the Civil Code is amended to  
2     read:  
3     1368. (a) The owner of a separate interest, other than an owner  
4     subject to the requirements of Section 11018.6 of the Business and  
5     Professions Code, shall, as soon as practicable before transfer of  
6     title to the separate interest or execution of a real property sales  
7     contract therefor, as defined in Section 2985, provide the following  
8     to the prospective purchaser:  
9     (1) A copy of the governing documents of the common interest  
10    development, including any operating rules, and including a copy  
11    of the association's articles of incorporation, or, if not incorporated,  
12    a statement in writing from an authorized representative of the  
13    association that the association is not incorporated.  
14    (2) If there is a restriction in the governing documents limiting  
15    the occupancy, residency, or use of a separate interest on the basis  
16    of age in a manner different from that provided in Section 51.3, a  
17    statement that the restriction is only enforceable to the extent  
18    permitted by Section 51.3 and a statement specifying the applicable  
19    provisions of Section 51.3.  
20    (3) A copy of the most recent documents distributed pursuant  
21    to Section 1365.  
22    (4) A true statement in writing obtained from an authorized  
23    representative of the association as to the amount of the  
24    association's current regular and special assessments and fees, any  
25    assessments levied upon the owner's interest in the common

1 interest development that are unpaid on the date of the statement,  
2 and any monetary fines or penalties levied upon the owner's  
3 interest and unpaid on the date of the statement. The statement  
4 obtained from an authorized representative shall also include true  
5 information on late charges, interest, and costs of collection which,  
6 as of the date of the statement, are or may be made a lien upon the  
7 owner's interest in a common interest development pursuant to  
8 Section 1367 or 1367.1.

9 (5) A copy or a summary of any notice previously sent to the  
10 owner pursuant to subdivision (h) of Section 1363 that sets forth  
11 any alleged violation of the governing documents that remains  
12 unresolved at the time of the request. The notice shall not be  
13 deemed a waiver of the association's right to enforce the governing  
14 documents against the owner or the prospective purchaser of the  
15 separate interest with respect to any violation. This paragraph shall  
16 not be construed to require an association to inspect an owner's  
17 separate interest.

18 (6) A copy of the preliminary list of defects provided to each  
19 member of the association pursuant to Section 1375, unless the  
20 association and the builder subsequently enter into a settlement  
21 agreement or otherwise resolve the matter and the association  
22 complies with Section 1375.1. Disclosure of the preliminary list  
23 of defects pursuant to this paragraph does not waive any privilege  
24 attached to the document. The preliminary list of defects shall also  
25 include a statement that a final determination as to whether the list  
26 of defects is accurate and complete has not been made.

27 (7) A copy of the latest information provided for in Section  
28 1375.1.

29 (8) Any change in the association's current regular and special  
30 assessments and fees which have been approved by the  
31 association's board of directors, but have not become due and  
32 payable as of the date disclosure is provided pursuant to this  
33 subdivision.

34 (9) A copy of the most recent 12 months of minutes of the  
35 regular meetings of the association's board of directors that were  
36 approved by the association's board of directors.

37 (b) (1) Upon written request, the association shall, within 10  
38 days of the mailing or delivery of the request, provide the owner  
39 of a separate interest, or any other recipient authorized by the  
40 owner, with a copy of the requested documents specified in

1 paragraphs (1) to (9), inclusive, of subdivision (a). Upon receipt  
2 of a written request, the association shall provide a written or  
3 electronic estimate of the fees that will be assessed for providing  
4 the requested documents. The documents required to be made  
5 available pursuant to this section may be maintained in electronic  
6 form, and may be posted on the association's Internet Web site.  
7 Requesting parties shall have the option of receiving the documents  
8 by electronic transmission if the association maintains the  
9 documents in electronic form. The association may collect a  
10 reasonable fee for the procurement, preparation, reproduction, and  
11 delivery of the documents requested pursuant to the provisions of  
12 this section.

13 (2) No additional fees may be charged by the association for  
14 the electronic delivery of the documents requested.

15 (3) Fees for any documents required by this section shall be  
16 distinguished from other fees, fines, or assessments billed as part  
17 of the transfer or sales transaction. Delivery of the documents  
18 required by this section shall not be conditioned upon, or required  
19 to be combined with, any other documents, items, or services.

20 (4) An association may contract with any person or entity to  
21 facilitate compliance with the requirements of this subdivision on  
22 behalf of the association, subject to the same standards required  
23 of the association.

24 (5) The association shall also provide a recipient authorized by  
25 the owner of a separate interest with a copy of the completed form  
26 specified in Section 1368.2 at the time the required documents are  
27 delivered.

28 (c) (1) Except as provided in paragraph (2), neither an  
29 association nor a community service organization or similar entity  
30 may impose or collect any assessment, penalty, or fee in connection  
31 with a transfer of title or any other interest except for the following:

32 (A) An amount not to exceed the association's actual costs to  
33 change its records.

34 (B) An amount authorized by subdivision (b).

35 (2) The prohibition in paragraph (1) does not apply to a  
36 community service organization or similar entity, or to a nonprofit  
37 entity that provides services to a common interest development  
38 under a declaration of trust, that is described in subparagraph (A)  
39 or (B):

1 (A) The community service organization or similar entity  
2 satisfies both of the following requirements:

3 (i) The community service organization or similar entity was  
4 established prior to February 20, 2003.

5 (ii) The community service organization or similar entity exists  
6 and operates, in whole or in part, to fund or perform environmental  
7 mitigation or to restore or maintain wetlands or native habitat, as  
8 required by the state or local government as an express written  
9 condition of development.

10 (B) The community service organization or similar entity, or a  
11 nonprofit entity that provides services to a common interest  
12 development under a declaration of trust, satisfies all of the  
13 following requirements:

14 (i) The organization or entity is not an organization or entity  
15 described in subparagraph (A).

16 (ii) The organization or entity was established and received a  
17 transfer fee prior to January 1, 2004.

18 (iii) On and after January 1, 2006, the organization or entity  
19 offers a purchaser the following payment options for the fee or  
20 charge it collects at time of transfer:

21 (I) Paying the fee or charge at the time of transfer.

22 (II) Paying the fee or charge pursuant to an installment payment  
23 plan for a period of not less than seven years. If the purchaser  
24 elects to pay the fee or charge in installment payments, the  
25 organization or entity may also collect additional amounts that do  
26 not exceed the actual costs for billing and financing on the amount  
27 owed. If the purchaser sells the separate interest before the end of  
28 the installment payment plan period, he or she shall pay the  
29 remaining balance prior to transfer.

30 (3) For the purposes of this subdivision, a “community service  
31 organization or similar entity” means a nonprofit entity, other than  
32 an association, that is organized to provide services to residents  
33 of the common interest development or to the public in addition  
34 to the residents, to the extent community common areas or facilities  
35 are available to the public. A “community service organization or  
36 similar entity” does not include an entity that has been organized  
37 solely to raise moneys and contribute to other nonprofit  
38 organizations that are qualified as tax exempt under Section  
39 501(c)(3) of the Internal Revenue Code and that provide housing  
40 or housing assistance.

(d) Any person or entity who willfully violates this section is liable to the purchaser of a separate interest that is subject to this section for actual damages occasioned thereby and, in addition, shall pay a civil penalty in an amount not to exceed five hundred dollars (\$500). In an action to enforce this liability, the prevailing party shall be awarded reasonable attorneys' fees.

(e) Nothing in this section affects the validity of title to real property transferred in violation of this section.

(f) In addition to the requirements of this section, an owner transferring title to a separate interest shall comply with applicable requirements of Sections 1133 and 1134.

(g) For the purposes of this section, a person who acts as a community association manager is an agent, as defined in Section 2297, of the association.

SEC. 2. Section 1368.2 is added to the Civil Code, to read:

1368.2. The form for billing disclosures required by Section 1368 shall be in substantially the following form:

CHARGES FOR DOCUMENTS PROVIDED AS REQUIRED BY SECTION  
1368 1368\*

Property Address \_\_\_\_\_

Owner of Property \_\_\_\_\_

Owner's Mailing Address \_\_\_\_\_  
(If known or different from property address.)

Provider of the Section 1368 Items:

Print Name	Position or Title	Association or Agent	Date Form Completed
------------	-------------------	----------------------	---------------------

Check or Complete Applicable Column or Columns Below

Document	Civil Code Section	Included	Not Available (N/A) or Not Applicable (N/App)	Fees
Articles of Incorporation or	Section 1368(a)(1)	_____	_____	_____

1	statement that not				
2	incorporated				
3	CC&Rs	Section	_____	_____	_____
4		1368(a)(1)			
5	Bylaws	Section	_____	_____	_____
6		1368(a)(1)			
7	Operating Rules	Section	_____	_____	_____
8		1368(a)(1)			
9	Age restrictions, if any	Section	_____	_____	_____
10		1368(a)(2)			
11	Pro forma operating	Sections 1365	_____	_____	_____
12	budget or summary,	and 1368(a)(3)			
13	including reserve study				
14	Assessment and reserve	Sections 1365	_____	_____	_____
15	funding disclosure	and 1368(a)(4)			
16	summary				
17	Financial statement	Sections 1365	_____	_____	_____
18	review	and 1368(a)(3)			
19	Assessment	Sections 1365	_____	_____	_____
20	enforcement policy	and 1368(a)(4)			
21	Insurance summary	Sections 1365	_____	_____	_____
22		and 1368(a)(3)			
23	Regular assessment	Section	_____	_____	_____
24		1368(a)(4)			
25	Special assessment	Section	_____	_____	_____
26		1368(a)(4)			
27	Emergency assessment	Section	_____	_____	_____
28		1368(a)(4)			
29	Other unpaid	Sections 1367.1	_____	_____	_____
30	obligations of seller	and 1368(a)(4)			
31	Approved changes to	Section 1365 and	_____	_____	_____
32	assessments	1368(a)(4), (8)			
33	Settlement notice	Sections	_____	_____	_____
34	regarding common area	1368(a)(6), (7)			
35	defects	and 1375.1			
36	Preliminary list of	Sections	_____	_____	_____
37	defects	1368(a)(6), 1375,			
38		and 1375.1			
39	Notice(s) of violation	Sections 1363	_____	_____	_____
40		and 1368(a)(5)			

1  
2  
3 Required statement of Section 1368 \_\_\_\_\_  
4 fees \_\_\_\_\_  
5 Most recent 12 months Section \_\_\_\_\_  
6 of minutes 1368(a)(9) \_\_\_\_\_  
7 *Total fees for these* \_\_\_\_\_  
8 *documents:*  
9 *\* The information provided by this form may not include all fees that may be*  
10 *imposed before the close of escrow. Additional fees that are not related to the*  
11 *requirements of Section 1368 may be charged separately.*  
12

O